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October 6, 2003

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The Honorable Stephen A. Perry
Administrator
General Services Administration
18th and F Street, NW
Washington, DC 20405

Dear Mr. Perry:

I am writing to inquire about your apparent decision to hold the Currituck Beach Lighthouse deed rather than to transfer the property without delay to the nonprofit organization that the Department of Interior has determined would be the best steward of the lighthouse.

Built in 1875, the historic Currituck Beach Lighthouse sits in Currituck County, North Carolina, on the Outer Banks. Beginning in 1980, the Outer Bank Conservationists (OBC), a nonprofit organization, has been restoring and maintaining the lighthouse compound. OBC has leased the 0.8 acres of federal property on which the lighthouse tower sits from the Coast Guard for the last 13 years. OBC opened the lighthouse to the public in 1990, and nearly 100,000 visitors pay to see the lighthouse each year.¹ Since 1991, the organization has spent over \$700,000 restoring the lighthouse tower.²

In 2000, Congress amended the National Historic Preservation Act of 1966 by passing the National Historic Lighthouse Preservation Act (NHLPA), which provides for the no-cost transfer of "excess" historic lighthouses to nonprofit corporations and government entities.³ For the first time, nonprofits were placed on equal footing with local, state, and federal government agencies in their efforts to obtain historic lighthouse properties. Under the statute, the Coast Guard identifies excess lighthouses, the Secretary of Interior determines to whom a lighthouse should be conveyed, and you, as Administrator of GSA, "shall convey" the deed to the entity selected by the Secretary of the Interior.

¹ Memorandum from P. Daniel Smith, Special Assistant to the Director of the National Park Service, to the Director of the National Park Service, 3 (March 20, 2003).

² U.S. Coast Guard, *Currituck Lighthouse Summary of Revenue and Expenses*.

³ National Historic Lighthouse Preservation Act of 2000, 16 U.S.C. § 470w-7.

In 2001, the Coast Guard designated the Currituck Lighthouse as “excess.” Currituck County and OBC submitted competing applications for ownership. Although the North Carolina Department of Cultural Resources (NCDCCR) initially expressed interest in taking possession of the lighthouse, ultimately it did not submit an application. Instead, NCDCCR sent a letter endorsing OBC.⁴

In accordance with the statutory process, a National Park Service Review Panel reviewed the applications and awarded the lighthouse to OBC. OBC’s application scored 388 out of a possible 400 points, while the county’s application garnered just 132 points.⁵ The panel noted, “OBC most completely addressed all aspects of the application as well as demonstrated a commitment to preserving and maintaining the light tower for future generations to visit and learn from.”⁶ On July 30, 2003, the Assistant Secretary for Fish and Wildlife and Parks conducted a *de novo* review of the two applications and independently determined that OBC would be the superior steward for the lighthouse.⁷ Two days later, Secretary of Interior Gale Norton wrote to you, pursuant to the NHLPA, requesting that GSA transfer the Currituck Beach Lighthouse to OBC.⁸

There has been congressional interest in the transfer of the Currituck Beach Lighthouse. Rep. Walter B. Jones, who is a strong supporter of the county’s bid for control of the lighthouse, has been particularly involved. In addition to pushing federal agencies to launch investigations of OBC or to delay transfer of the deed, Rep. Jones inserted an amendment into a natural resources bill last year that would have required setting aside the NHLPA process in order to immediately transfer the lighthouse to Currituck County.⁹ Most recently, Rep. Tom Davis,

⁴ Memorandum from P. Daniel Smith, Special Assistant to the Director of the National Park Service, to the Director of the National Park Service, 1 (March 20, 2003).

⁵ *Id.* at 2.

⁶ *Id.*

⁷ Craig Manson, *Decision of the Assistant Secretary for Fish and Wildlife and Parks on the Request of the Board of Commissioners of Currituck County, North Carolina for a De Novo Review of the Applications in the Matter of the Disposition of the Currituck Beach Lighthouse, Corolla, North Carolina, under the Provisions of the National Historic Lighthouse Preservation Act of 2000* (July 30, 2003).

⁸ Letter from Gale A. Norton, Secretary of the Interior, to Stephen A. Perry, Administrator, General Services Administration (Aug. 1, 2003).

⁹ Shiela Muto, *Battle over Lighthouse Portends More to Come*, Real Estate Journal (Sept. 17 2003); Sandy Semans, *Jones Stops Deed Swap: Some Are Beginning to Ask Why*, Outer

Chairman of the House Committee on Government Reform, sent a September 11, 2003, letter to the Acting Inspector General of the Department of Homeland Security asking him to investigate OBC's compliance with the federal license for the lighthouse.¹⁰ Specifically, Rep. Davis questioned whether OBC failed to turn over at least \$175,000 of federal funds to the Coast Guard. That day, Rep. Davis wrote a second letter to you requesting that GSA not convey the lighthouse until the Inspector General's investigation is complete.¹¹

I want to make sure you know, however, that the financial questions raised by Rep. Davis already have been investigated. At Rep. Jones' behest, the Coast Guard performed an August 2003 review of OBC's adherence to the lease agreement, finding that OBC was in compliance.¹² A Coast Guard spokeswoman reported, "We're satisfied all the funds are accounted for."¹³ Moreover, the National Park Service Review Panel and the Assistant Secretary for Fish and Wildlife and Parks each evaluated OBC's finances during the application process. Notwithstanding their examination of OBC's finances, both the panel and the Assistant Secretary determined that OBC should receive the lighthouse.

There is also the serious question of whether GSA has the legal authority to hold the deed now that the Secretary of Interior has awarded the lighthouse to OBC. As OBC's attorney pointed out in her August 14, 2003, letter to you and the General Counsel of GSA, the NHLPA uses the non-discretionary words "shall convey" to describe your role in the lighthouse transfer process.¹⁴ Individuals involved in this process informed my staff that a legal memorandum originating with the Office of the General Counsel concurs with OBC's conclusion that GSA lacks legal authority to delay transfer of the lighthouse.

Banks Sentinel, 1 (Sept. 14, 2003); Memorandum from Chief, Financial Management Division, to R.S. Horowitz, Director of Finance, Procurement, & Internal Security (Aug. 25, 2003); Letter from Rep. Walter B. Jones to Renee Courtland, General Services Administration (July 30, 2003).

¹⁰ Letter from Rep. Tom Davis to Clark Kent Ervin, Acting Inspector General, Department of Homeland Security (Sept. 11, 2003).

¹¹ Letter from Rep. Tom Davis to Stephen A. Perry, Administrator, General Service Administration (Sept. 11, 2003).

¹² Memorandum from Chief, Financial Management Division, to R.S. Horowitz, Director of Finance, Procurement, & Internal Security (Aug. 25 2003).

¹³ Shiela Muto, *supra* note 9.

¹⁴ Letter from V. Heather Sibbison to Stephen A. Perry, Administrator, General Services Administration, and Raymond J. McKenna, General Counsel, General Services Administration (Aug. 14, 2003).

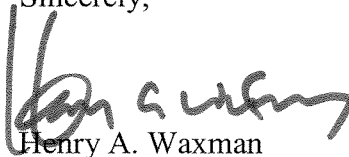
The Honorable Stephen A. Perry
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In light of these concerns regarding the legal authority of GSA to postpone indefinitely conveyance of the Currituck Beach Lighthouse to OBC, I request that you provide answers to the following questions by October 14, 2003:

1. Has the Office of the General Counsel examined the question of whether GSA has legal authority to delay transfer of the lighthouse to OBC? If so, what was the conclusion? If not, why has this issue not been examined? Please provide any legal memoranda from the Office of General Counsel relevant to these questions.
2. Has the deed to the Currituck lighthouse property been prepared? Specifically, aside from the absence of a signature and date, is the deed complete?
3. If the Acting Inspector General of the Department of Homeland Security finds that OBC complied with the license agreement, will GSA immediately convey the lighthouse to OBC? If not, please explain the cause of any anticipated delay.

It is critical that the statutory process established by the National Historic Lighthouse Preservation Act of 2000 be followed. Each agency involved in this process must fulfill its statutory obligation and refrain from actions or omissions for which it does not have legal authority. Although the restoration and maintenance of the Currituck Beach Lighthouse itself is important, it is crucial that the promise of the NHLPA to preserve historic lighthouses throughout the nation be realized.

Sincerely,

A handwritten signature in dark ink, appearing to read "Henry A. Waxman", written over a horizontal line.

Henry A. Waxman
Ranking Minority Member